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IN THE
Supreme Court of the United States

October Term, 1945

No. 489

JOSEPH A. GORDON,

Petitioner,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit and
Brief in Support Thereof.

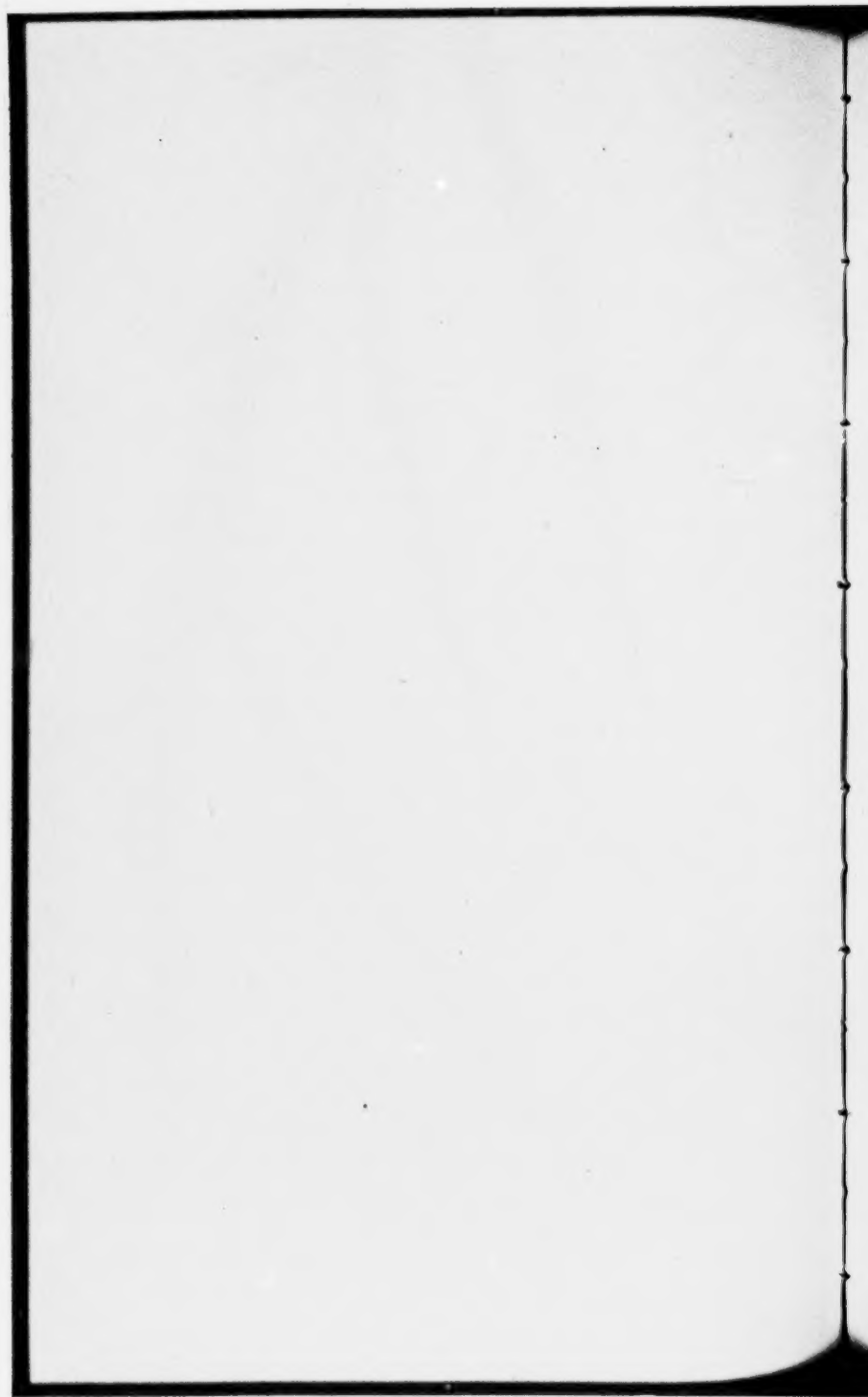
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**Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit and
Brief in Support Thereof.**

Your petitioner respectfully shows:

Summary and Statement of Matter Involved.

Pursuant to the Emergency Price Control Act of 1942 (56 Stat. c. 26 (June 30, 1944); 58 Stat. 632, 640, c. 325; 50 U. S. C. A. Appx., §901, 11 F. C. A., Title 50, Appx. 25; 50 U. S. C. A. Appx., §925; Public Law No 108, 79th Cong., 1st Sess. (50 Stat., Chap. 214)), hereinafter called the Act, the Price Administrator issued to petitioner a license as a condition of selling various food commodities for which maximum prices were established under the Act. [R. 48.] This license was suspended for a period of fourteen days from September 16, 1945 to September 29, 1945

by the judgment of the trial court [R. 53], the suspension being stayed, however, during the appeal [R. 209], for violation of a regulation issued by the Administrator in an action under Section 205(f)(2) of the Act. [R. 47, 48.]

On June 25, 1946 the United States Circuit Court of Appeals for the Ninth Circuit affirmed this judgment. [R. 208, *et seq.*; *Gordon v. Porter*, 155 F. (2d) 949.] This opinion said that the evidence warranted the finding that petitioner "failed to post or mark the sales prices on many commodities under a license granted him in the manner required of him by the Price Administrator's Revised General Order 51, L. A. Order No. 5." It further observed that other violations of the regulations were found, but that it was unnecessary to consider them.

The other violations which the Circuit Court said it was unnecessary to consider were the subject of a complaint by petitioner under Section 204(a) of the Act, which attacked the validity of certain provisions of the Administrator's regulations classifying petitioner's business and fixing his price ceilings, on the basis of the volume of his sales and the sales of other retailers under the same roof, strangers to him. This complaint was dismissed by the United States Emergency Court of Appeals (*Gordon v. Porter*, 153 F. (2d) 614), a petition for rehearing being there denied and with certiorari also being denied on June 3, 1946 by this Honorable Court (No. 1147. *Joseph A. Gordon v. Paul A. Porter, Price Administrator*, 90 Law. Ed. Adv. Ops. 1072).

The Circuit Court denied the petition for a rehearing of this petitioner (filed July 24, 1946 [R. 213]) by order and opinion dated August 6, 1946. [R. 213, 214.]

The Act expired by its terms on June 30, 1946 (50 U. S. C. A. 1945 Cumulative Annual Pocket Part, p. 49), but contained a saving clause, later herein quoted, which petitioner claims is not applicable to the case at bar.

Jurisdiction.

Jurisdiction of this Honorable Court is invoked under the provisions of Section 240, Judicial Code, 28 U. S. C. A., Section 347, the judgment sought to be reviewed being of a United States Circuit Court of Appeals.

Questions Presented.

1. Where a license issued to a food retailer under the Act is suspended by the trial court, whose judgment [R. 53] is affirmed by the Circuit Court prior to June 30, 1946 [R. 209], the date on which the provisions of the Act, and all regulations, orders, price schedules and requirements thereunder terminated (50 U. S. C. A., 1945 Cumulative Annual Pocket Part, p. 49), did the Circuit Court err in refusing on August 6, 1946 to dismiss the proceeding [R. 213, 214] as asked by petitioner in his petition for rehearing filed July 24, 1946 [R. 213] on the ground that the question of the suspension of his license had become moot, at which time the Price Control Extension Act of 1946, hereinafter referred to as the "Extension Act", had not been signed by the President, which he did on July 25, 1946 (15 United States Law Weekly, 32)?

2. Where the statute under which this action was filed (the Act (Section 205(f)(2))) provided that

"Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this sub-section, or has violated any of

the provisions of any regulation, order, or requirement under section 2 or section 202(b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. * * *

did the Circuit Court err in holding [R. 211] that it was not a condition precedent to a judgment of suspension that the Administrator prove at the trial a violation asserted in the notice, since the Administrator is a public officer and is presumed to have done his duty in arriving at his "judgment"?

Reasons Relied on for the Allowance of the Writ.

The questions here presented for review are important questions of federal law which have not been, but should be, settled by this Honorable Court and, furthermore, the Circuit Court, petitioner respectfully states, has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the District Court as to call for an exercise of the power of supervision of this Court.

This is so for the following reasons: With respect to the first question, the Extension Act, enacted July 25,

1946 (15 United States Law Weekly, 32), provides in Section 18 that

“(1) The provisions of this Act shall take effect as of June 30, 1946 and (2) all regulations, orders, price schedules and requirements under the Emergency Price Control Act of 1942, as amended . . . , and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 . . . provided, further, that no act or transaction, or omission, or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act, shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such acts: . . .”.

The interim of twenty-four days from the termination of the Act on June 30, 1946 to July 25, 1946, the date of enactment of the Extension Act, poses serious questions concerning the effect of the purported saving clause contained in Section 18 of the latter statute, above quoted, in its attempt to bridge this interim and to make this price control legislation continuously effective. As is seen from this saving language, no act occurring in this interim shall be deemed to be a violation of the Act, or of any regulation, order, schedule or requirement thereunder.

The license to deal in price control commodities issued to petitioner, and suspended in this proceeding, was issued to him under the Act. The power to issue licenses, the need for such licenses and the license issued to petitioner terminated with the Act on June 30, 1946. The effect of the Extension Act, it is submitted, is to create new licensing powers in the Administrator, exactly duplicating those he held under the Act but, nevertheless, the licenses to be issued by him under the Extension Act are actually "new" licenses. This petitioner does not now need the license issued under the Act to deal in price controlled commodities but he will need, if the Administrator invokes his licensing powers, a "new" license under the Extension Act. These are separate licenses. Is there any point in suspending a license which has terminated and for which petitioner has no further need? When the trial court judgment was written in 1945 the Act was in effect and petitioner needed such a license to deal in price controlled commodities. There was point in having the judgment then say that his license was suspended and the language then had meaning. If the judgment is now finally affirmed the notice of suspension to be posted thereunder, in order to conform to the new statutory situation, should be in this meaningless language:

"The license granted to Joseph A. Gordon by the Price Administrator under the Emergency Price Control Act of 1942, as amended, as a condition of selling commodities subject to price control, and which terminated June 30, 1946, and for which he has no further need, is suspended for a period of two weeks

Joseph A. Gordon has been issued a license to deal in price controlled commodities under the Price Control Extension Act of 1946 and is entitled thereunder to deal in price controlled commodities."

There is nothing in the Extension Act which gives the Administrator the power to refuse a license thereunder to petitioner, if the Administrator avails himself of the licensing power there made available to him, upon the ground that petitioner's license under the Act was not in good standing on June 30, 1946, when the Act, and all licenses issued thereunder, terminated.

The litigation is, consequently, moot, petitioner contends, and this Honorable Court ought to grant certiorari and so hold.

Provision for enforcement of the Extension Act by suits to suspend licenses is also contained in the Extension Act, which by Section 13 thereof amends the third sentence of paragraph (2) of Section 205(f) of the Act by adding the provision that "if the defendant proves that the violation in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation, then in that event no suspension shall be ordered or directed."

On June 30, 1946, there undoubtedly were other actions to suspend licenses pending throughout the country. Petitioner therefore respectfully suggests that this action is an important one of federal law and requires appropriate settlement by this Honorable Court.

With respect to the second question, petitioner suggests that it is of general importance to the Administrator, and to those subject to his regulations, to be advised by the court of last resort whether or not the Administrator may issue a warning notice to a retailer who may never have violated the Act and then rely upon the "presumption" that he has done his duty, when in fact he has not, a course of action open to him and approved by the Circuit Court in

its decision herein, and thus be relieved of the necessity of proving at the trial of the suspension action that a violation described in the warning notice actually occurred. In short, it is of general importance for the Administrator, and food retailers, to know finally whether or not he may issue warning notices to all food retailers in the country instantler, and at the trial of a suit by him to suspend a license, avoid the necessity of proving a violation asserted in the warning notice by relying on the "presumption" accorded him by the Circuit Court here.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the judgment of the United States Circuit Court of Appeals in the case at bar, *Gordon v. Porter*, 155 F. (2d) September, 1946.

JOSEPH A. GORDON,
Petitioner,

By LOUIS H. BURKE,
Counsel for Petitioner.

DANIEL G. MARSHALL,
Of Counsel.

The undersigned hereby certifies that the foregoing petition is, in his opinion, well founded and that it is not interposed for delay.

LOUIS H. BURKE,
Counsel for Petitioner.

IN THE
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October Term, 1945

No.

JOSEPH A. GORDON,

Petitioner,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI.**

May It Please the Court:

Opinions Below.

The judgment of the trial court was entered September 4, 1945. [R. 54.]

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit in the case at bar, rendered and filed June 25, 1946 [R. 209 *et seq.*], is reported in 155 F. (2d) 949, upon which date its judgment affirming the lower court was also entered. [R. 208.]

The opinion of that Court filed August 6, 1946, accompanying its order, filed the same day, denying the petition for rehearing, which was filed July 24, 1946 [R. 213], is not reported but is printed in the record here, pages 213, 214.

Jurisdiction.

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition at page three.

Statement of Facts.

In this suit by the Administrator, the trial court gave judgment in his favor under Section 205(f)(2) of the Act suspending the license issued by the Administrator under Section 205(f)(1) from September 16, 1945 to September 29, 1945 [R. 54], the suspension being stayed pending appeal. [R. 71.]

The Circuit Court held that the evidence "warranted the finding that petitioner failed to post or mark prices on many commodities sold at retail under a license granted him", saying also that other violations of the regulations were found "but it is unnecessary to consider them . . .", in its opinion filed June 25, 1946. [R. 209.]

It was also decided [R. 210, 211] that it was not necessary for the Administrator to prove at the trial any of the violations asserted in the warning notice which he delivered to petitioner under the statute giving him the authority to file this action and which reads as follows:

"Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this sub-section, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202(b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is ap-

plicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. * * *"

The Act, Section 205(f)(2).

The Circuit Court so concluded on the ground that the Administrator "is a public officer and presumed to have done his duty in arriving at his 'judgment' that a person has violated any of the provisions of his license, or of any regulation." After this opinion and judgment affirming the trial court were filed on June 25, 1946 [R. 212], and on June 30, 1946, the provisions of the Act, and all regulations, orders, price schedules, and requirements thereunder, terminated by reason of the following language contained in the Act:

"The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense

and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act [said sections] and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense (as amended June 30, 1945, C. 214, §1, 59 Stat. 306)."

50 U. S. C. A., 1945 Cumulative Annual Pocket Part, p. 49.

On July 24, 1946, being within the thirty-day period after judgment prescribed by Rule 25 of the Circuit Court so to do, petitioner filed a petition for rehearing in that court [R. 213] contending, as the opinion denying the same points out, "that on the expiration of the period of the Emergency Price Control Act of 1942 on June 30, 1946, the question of his suspension of his sales license and of the injunction from selling above maximum prices has become moot, and that the proceeding should be dismissed." [R. 214.]

On the following day the President signed the Price Extension Act of 1946 (15 United States Law Weekly 32), which provides in Section 18 as follows:

"(1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules and requirements under the Emergency Price Control Act of 1942, as amended . . . , and the Stabilization Act of 1942, as amended, which

were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 . . . provided, further, that no act or transaction, or omission, or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act, shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such acts: . . ."

Specification of Errors.

The Circuit Court erred:

1. In refusing to dismiss the proceeding, as urged by petitioner in his petition for rehearing, the same having become moot by reason of the termination of the Act; and
2. In holding that the Administrator was not required to prove at the trial any of the violations asserted by him in the warning notice served on petitioner.

ARGUMENT.

I.

The Circuit Court Erred in Refusing to Dismiss the Proceeding, as Urged by Petitioner in His Petition for Rehearing, the Same Having Become Moot by Reason of the Termination of the Act.

The termination of the Act terminated the license here suspended by the trial court and likewise terminated the need by petitioner for such license to deal in price controlled commodities.

The saving clause in the Act, above quoted, preserves after termination of the Act on June 30, 1946, only suits upon offenses occurring prior to the termination date where monetary penalties or criminal penalties are sought, in the very nature of the situation. This saving clause obviously could not preserve for enforcement after the termination date a suit to suspend a license, as in the case at bar, when that license expired with the termination of the Act.

Whatever may be the effect of the language in the Extension Act purporting to make the same effective as of June 30, 1946, and thus make price control continuously effective even through the interim of twenty-four days between the termination of the Act and the enactment of the Extension Act, with respect to damage actions and criminal actions, it is meaningless so far as a suit to suspend a license is concerned, the license suspended prior

to June 30, 1946, having expired on that date and not being thereafter required.

If the Administrator decides to avail himself of the licensing power given him in the Extension Act, which duplicates the same power given him in the Act, he has no authority under the Extension Act to refuse the issuance of a "new" license to a retailer on the ground that on June 30, 1946, when the Act expired, a license held thereunder was not in good standing in the sense that a suspension having been judicially ordered, by a judgment not then final, had not yet been served.

This litigation is therefore moot and this Honorable Court ought to grant certiorari and so declare upon the authority of such cases as the following:

Alejandrino v. Quezon, 271 U. S. 528, 70 L. Ed. 1071, 46 S. Ct. 600;

Brownlow v. Schwartz, 261 U. S. 216, 67 L. Ed. 620, 43 S. Ct. 263;

Atherton Mills v. Johnson, 259 U. S. 13, 66 L. Ed. 814, 42 S. Ct. 422;

Heitmuller v. Stokes, 256 U. S. 359, 65 L. Ed. 990, 41 S. Ct. 522;

Berry v. Davis, 242 U. S. 468, 61 L. Ed. 441, 37 S. Ct. 208.

II.

The Circuit Court Erred in Holding That the Administrator Was Not Required to Prove at the Trial Any Violation Asserted by Him in the Warning Notice Served on Petitioner.

The statute authorizing this action by the Administrator fixed as a condition precedent to such suit the requirement that he must give a warning notice whenever in his judgment a person has violated any of the provisions of the license issued to such person or has violated any of the provisions of any regulation (the Act, Section 205 (f) (2)). He may then file such an action if after the receipt of such warning notice the person to whom it is given again commits a violation.

At the trial the petitioner objected to the warning notice being received in evidence. [R. 83, 105-107.] The trial court filed a written decision holding that it was not necessary for the Administrator to make any proof of any violation asserted in the warning notice. [R. 41-44.]

Petitioner persisted in the same objection in the Circuit Court, as shown by its opinion. [R. 211.] The effect of the Circuit Court ruling is to say that the condition precedent is satisfied by the Administrator giving the warning notice, even though no violation had occurred up to that time.

There is no doubt that the Administrator exercised his judgment in the sense that he determined to send the notice because the fact is that he did send the notice. However, he proved no violation asserted in the warning notice at the trial. It may be that no violation ever occurred. It may be that the Administrator in handling hundreds of thousands of matters under the Act, by a clerical error,

may have sent this warning notice to this petitioner, intending it for some other person. He claims, however, and the trial court and Circuit Court agreed with him, that at no stage of the judicial proceeding should he be required to make some proof of any violations asserted in the notice. It may be that that which the Administrator conceived to be a violation was not in law a violation because of his misapprehension of the legal rights of petitioner.

Granting that the exercise of his judgment leading to the issuance of the warning notice is a discretionary matter, petitioner contends that it is that kind of a discretionary matter permitting judicial review within the meaning of the language of this Honorable Court in *Arenas v. United States of America*, 322 U. S. 419, 88 L. Ed. 1363, 64 S. Ct. 1090, where it is said:

“Even in some discretionary matters, it has been held that if an official acts solely on grounds which misapprehend the legal rights of the parties, an otherwise unreviewable discretion may become subject to correction. *Perkins v. Elg*, 307 U. S. 325, 349, 83 L. ed. 1320, 59 S. Ct. 884.”

The judgment of the Administrator which led him to issue this warning notice is closely akin, if not the same, as an order issued by him. This being so, the Circuit Court decision in the case at bar is in conflict with the decision of another Circuit Court of Appeals which has said that

“Where courts have been called upon to review administrative orders in the past, they have customarily required that the order sufficiently disclose the basis of the action to satisfy them that there has been a

compliance with the express and implied conditions underlying the exercise of the power."

Walling v. Benson, 137 F. (2d) 501 (C. C. A. 8).

The importance of this warning notice is at once apparent. It is not only a condition precedent to the maintenance of such an action as the one at bar, but it has another important aspect. So far as enforcement by an action of the type here considered is concerned, the warning notice has the indubitable effect of cancelling all violation prior to its service upon a retailer. In other words, a retailer may operate in open and flagrant violation of the regulations but, so far as an action of the type here considered is concerned, these violations are cancelled upon the warning notice being served.

Unless the warning notice is served, the action cannot be maintained.

The legislative intent behind the enactment of this provision is evident. It is well known that the Act necessarily imposed heavy burdens of administrative detail on retailers. Dealing in thousands of items, it was inevitable that the best disposed retailer could not hope to be letter perfect in his compliance with the myriad of regulations necessarily flowing from the Act.

However, the Congress obviously took into consideration the plight of well-intentioned retailers and, so far as this type of enforcement action is concerned, insisted by this legislation that he first have a warning notice before the Administrator proceeded to shut down his place of business for so long a period as a year. It is clear, then, that the Congress was aiming at a requirement that the Administrator, through his agent, of course, before filing

an action of the type here considered, should give the retailer the benefit of an inspection of his store, point out the violation to him, if any occurred (and, as has been said, the very nature of the case made such violations inevitable even for the most meticulous retailer whose clerks or customers might displace posting signs, or otherwise disarrange his merchandise so that literal violation might occur) and thus give him an opportunity to police his operation, and to bring his store in compliance with the regulation. This record is devoid of any evidence that petitioner's store was thus inspected on either of the dates referred to in the warning notice. From all that appears in the record, the Administrator, without having petitioner's premises inspected, issued the warning notice. Nevertheless, the Administrator here insists that he has fulfilled the condition precedent of the statute. If he is allowed to succeed in this contention, he has been allowed to vitiate the intention of the legislators. This is so because, under the Administrator's view, to make enforcement by this type of action available to him, he could distribute and serve these warning notices indiscriminately on all retailers within a certain area or areas, based simply upon his surmise or suspicion that violations existed. It is not to be denied that his surmise probably would be correct. In other words, it would probably be safe to guess that any retailer dealing in thousands of items must at any given moment be in violation of at least one of the regulations of the Administrator. But this would frustrate the intention of Congress.

This omission of his duty to inspect cannot be excused by any presumption that a public officer will do, or has done, his duty. This was a statutory burden laid upon him by the Congress and he must show just as clearly per-

formance of his duty to inspect as he does his duty to serve the warning notice after his inspection, if that inspection shows violation. At the most this presumption could only establish fulfillment of his duty to inspect. It could not mean that, in addition, it is to be presumed that violations were found on the presumed inspection.

It was, therefore, incumbent upon the Administrator to prove at the trial of this cause that he did three things.

The first of these requirements is that he should have proved that he discharged his duty of inspection. He did not prove this,

The next requirement is that a warning notice be served before the action was commenced. A document entitled warning notice, and intended to be such, was admittedly served. This was the second requirement and was fulfilled.

Attention will now be directed to the third requirement. By this is meant the requirement that at the trial of this cause he should have proved, as he proved any other fact, that the violations asserted in the warning notice were factual and not merely his suspicions. To do this, he should have had testimony showing the violations complained of in that notice. No such testimony is here present. He was required to prove at least one of the violations asserted in the warning notice just as much as he was required to prove the violations alleged specifically in the complaint as having occurred after the warning notice was served. But this he did not do.

This last requirement is important for still another reason. The warning notice requirement of this statute clothed petitioner with considerable protection. Until it

was served, so far as this kind of action is concerned, he could operate in flagrant violation of every regulation of the Administrator. However, once the Administrator observed a violation, assembled the evidence to establish it, and served the statutory warning notice, petitioner's immunity was cut off. From that moment on he acted at his own peril, so far as enforcement by this type of action is concerned. On the other hand, he could be in compliance for a long period of time, then fall into non-compliance innocently, for the purposes of this illustration, proceed to rectify his errors, confident that this type of action could not be invoked against him until the Administrator inspected his premises and issued the warning notice.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted and that this Honorable Court should review the decision of the United States Circuit Court of Appeals and finally reverse it.

September, 1946.

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Sec. 13	3, 6, 20
Licensing Order No. 1 (8 F. R. 13240)	3, 6, 20

Miscellaneous:

Cong. Rec., Vol. 90, pp. 5481-82	11
H. R. 5479, 77th Cong., 1st Sess., Sec. 204 (c) (2)	9
H. Rep. No. 2629, 79th Cong., 2d Sess., p. 18	8
S. Rep. No. 931, 77th Cong., 2d Sess., pp. 8-9	11

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 489

JOSEPH A. GORDON, PETITIONER

v.

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE
ADMINISTRATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. Its decision on the pre-trial hearing appears at page 41 of the record. Its findings of fact and conclusions of law appear at pages 47-52 of the record. The opinion of the circuit court of appeals (R. 209-212) is reported at 155 F. 2d 949. The opinion of that court on the petition for rehearing (R. 214) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 25, 1946 (R. 212). The

petition for rehearing was denied on August 6, 1946 (R. 213). The petition for a writ of certiorari was filed on September 11, 1946. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347 (a)).

QUESTIONS PRESENTED

1. Where a license to do business subject to price control has been ordered suspended by a district court and its order affirmed by the circuit court of appeals before termination of the Emergency Price Control Act on June 30, 1946, and the licensee, between that date and July 25, 1946 (the date of the enactment of the Price Control Extension Act of 1946), petitioned the circuit court of appeals for rehearing, urging that the proceeding be dismissed as moot, whether the circuit court of appeals erred in its decision rendered after July 25, 1946, which denied rehearing.

2. Whether in a proceeding to suspend a license under Section 205 (f) (2) of the Emergency Price Control Act, it is sufficient for the Price Administrator to prove the receipt of a license warning notice and the commission of violations subsequent thereto, or whether he must also prove the violations antecedent to the warning notice.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the

applicable regulations are set forth in the Appendix, *infra*, pp. 14-22.

STATEMENT

Section 205 (f) (1) of the Emergency Price Control Act, *infra*, pp. 15-16, authorizes the Price Administrator to require a license as a condition of doing business subject to the Act. Licensing Order No. 1, *infra*, pp. 20-22, and Section 13 of Maximum Price Regulation No. 422, *infra*, p. 20, which evidence an exercise of this authority, license all retail food stores. Section 205 (f) (2), *infra*, pp. 16-18, provides that where in the judgment of the Administrator any person has violated a provision of a license or a regulation, order, or price schedule, a warning notice shall be sent to him, and if after receipt of a warning notice the seller is again in violation, the appropriate federal or state court so finding shall suspend his license for a period not to exceed twelve months.

Petitioner operates individually a retail food store situated at 107 South Long Beach Boulevard, Compton, California, and sells from that store various commodities for which maximum prices have been established under the authority of the Emergency Price Control Act of 1942, as amended (R. 2, 23). On September 15, 1944, this action was filed by the Price Administrator in the United States District Court for the Southern District of California, to suspend the license which had been granted to petitioner to sell com-

modities subject to price control (R. 2-7). The Price Administrator introduced evidence to show that on March 24, 1944, a license warning notice had been sent to petitioner (R. 108-110), and it was stipulated that this notice had been received (R. 83). Evidence was also introduced that a number of items were on sale on June 5, 1944, at petitioner's store at prices above the lawful ceilings (R. 140-143), and that on the same date a number of items were not posted as to prices, as required by the applicable regulations (R. 143-144). No evidence was introduced as to the violations upon which the warning notice had been based. The district court found, *inter alia*, that petitioner had, after the receipt of the license warning notice, violated the provisions of the license and of the price regulations in that he had sold and offered to sell specified commodities at overceiling prices (R. 48-50), and that the sale prices on other specified commodities had not been posted (R. 51). Accordingly, on September 4, 1945, the district court entered judgment (1) suspending, for fourteen days, the license granted petitioner as a condition of his selling commodities subject to price control, (2) permitting the posting by respondent on petitioner's premises of a notice of the suspension, and (3) enjoining petitioner from buying and selling price-controlled commodities during the period of suspension, except as an ultimate consumer (R. 53-54). A stay

of execution of judgment pending appeal was granted on October 2, 1945 (R. 71).

On appeal to the circuit court of appeals, petitioner urged, among other contentions, that the Price Administrator was required to prove the violations upon which the license warning notice was based, as well as those occurring after the notice was received, and that under the applicable rules of law the evidence did not support the finding by the district court that over-ceiling sales had been made after petitioner had received the warning notice (R. 71-72). The circuit court of appeals affirmed the decision of the district court, holding that the Price Administrator as a public officer was presumed to have done his duty in exercising his judgment to the effect that violations had been committed prior to the issuance of the warning notice, and that only violations which had occurred subsequent to the receipt of the warning notice need be proved at the trial. (R. 209-212). Since Section 205 (f) (2) of the Emergency Price Control Act, *infra*, pp. 16-18, provides that a suspension order shall be affirmed on appeal if the evidence supports a finding that there has been "a violation of any provision" of the license or regulation after receipt of the warning notice, the circuit court of appeals did not rule on the more closely contested questions concerning overcharges, but rested its affirmance upon the violative failure of petitioner to post his ceiling prices.

On June 30, 1946, the Emergency Price Control Act expired, and on July 24, 1946, petitioner moved in the circuit court of appeals for rehearing, on the ground that the proceeding should be dismissed as moot. On July 25, 1946, the Price Control Extension Act of 1946 was enacted, extending the date of expiration of the Emergency Price Control Act to June 30, 1947, and providing that all regulations, orders, and requirements under the Emergency Price Control Act which had been in force on June 30, 1946, were to be in effect as though the Act had been enacted on June 30, 1946, but that no transaction, act, or failure to act occurring between June 30, 1946 and July 25, 1946, was to be deemed a violation. On August 6, 1946, the petition for rehearing was denied by the circuit court of appeals (R. 213).

ARGUMENT

1. Petitioner contends that this proceeding to suspend his license has been rendered moot by virtue of the fact that the Emergency Price Control Act expired on June 30, 1946 and was not revived until July 25, 1946, and that a license under the old Act is no longer necessary to do business under the extension. Section 18 of the Price Control Extension Act of 1946, *infra*, pp. 18-20, provides, however, that "all regulations, orders, price schedules, and requirements¹ under the

¹ Section 13 of *Maximum Price Regulation* 422 licenses food dealers, and *Licensing Order* No. 1 licenses all sellers subject to price control. Thus, the necessity of a license is

Emergency Price Control Act of 1942, as amended, * * * which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and * * * any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, * * * shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 * * *.” The necessity of a license to do business clearly falls within the foregoing provision. Likewise, a suit to suspend a license is a “proceeding” within the meaning of that term as used in the above-quoted provision.²

Since the extension is to be treated as though it had been enacted on June 30, 1946, its effect is no different from that of the various previous extensions of the Act which were enacted in 1943, 1944, and 1945, with no intervening gap. And it can hardly be contended that with each successive extension a new set of licenses were required and that all proceedings pending at those times for suspension of the old licenses were thereby

clearly a *requirement* within the meaning of that term as used in Section 18.

² In view of the precise applicability of Section 18, it is unnecessary to rely on the alternative theory, expressed by the court below, that under the saving clause in Section 1 (b) of the Act, the liability to suspension was unaffected by termination of the Act on June 30, 1946.

rendered moot. Under that theory, the initial violation, warning notice, suspension order, the entire appellate review proceeding, and the carrying out of the judgment of suspension, would all have to take place within one year or else the controversy would have been rendered moot by the expiration of the particular annual renewal of the statute under which the proceeding had been commenced. Hence, as a practical matter, it would have been impossible to suspend a license. The Congress could scarcely have intended that one of the enforcement sanctions which it provided should thus be rendered meaningless. The alternative, and only reasonable, construction to be placed on the Act is that the same licenses and license requirements were to carry over from one year to the next. The legislative history of the Price Control Extension Act favors the latter construction.³ Thus, it was clearly the intention

³ The conference report (H. Rep. No. 2629, 79th Cong., 2d Sess.) submitted with the bill which later became the Price Control Extension Act of 1946, reads at page 18, as follows: "Sections 1 and 2 of the Senate amendment amend the Price Control Act and the Stabilization Act so as to continue such acts in effect until June 30, 1947. By section 18 these amendments, as well as the other amendments proposed, are made effective as of June 30, 1946, so as to insure that the provisions of these acts will not be considered to have ceased to be in effect on June 30, 1946, and it is provided in section 18 that all regulations, orders, price schedules, and requirements under the Price Control Act and the Stabilization Act which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this legislation had been enacted on June 30, 1946."

of the Congress to insure continuity of price control regulations and requirements.

2. Petitioner further contends that the Price Administrator was required to prove not only the receipt of the warning notice and the commission of subsequent violations, but also the violations which occurred prior to the receipt of the warning notice, and which formed the basis of that notice. This contention is refuted by the plain language of Section 205 (f) (2) of the Act, *infra*, pp. 16-18. That section clearly limits the violations which must be proved in a judicial proceeding brought for the purpose of suspending a license to those occurring after the receipt of the warning notice. The section expressly provides that if the court finds that such violations have occurred after receipt of the warning notice, the order of suspension shall be issued, and that if the evidence supports the finding of a violation after receipt of the warning notice, the judgment shall be affirmed by the appellate court. Thus, the Congress determined that a warning notice should precede judicial action to suspend a license granted under the Act.⁴ Obviously, it could have

⁴ The Emergency Price Control bill, as originally introduced in the House of Representatives in 1941 contained provisions for the suspension of licenses by administrative action alone, the suspension being reviewable in the Emergency Court of Appeals, which was directed to affirm the revocation if "supported by substantial evidence in the record." [H. R. 5479, 77th Cong., 1st sess., Section 204 (c) (2).] The House Committee on Banking and Currency eliminated all licensing

authorized judicial suspension of a seller's license without regard to the giving of a warning notice. Instead, it provided that the Price Administrator, before bringing an action to suspend a license must (1) conclude that the seller has committed at least one violation, (2) issue a warning to the seller based on such violation, and (3) learn that the seller has committed a violation subsequent to the receipt of the warning notice. It is clear, therefore, that the seller's license cannot be suspended until he has received a warning notice and has committed a violation subsequent to the receipt of that notice. In these circumstances, there was no occasion for the Congress to require that there be a judicial inquiry into the violations which occur prior to the receipt of the warning notice, and the plain import of the language of the statute is that the Congress did not intend to do so. This construction finds support in the legislative history of the Act, as extended.⁵ Fur-

provisions from the bill. Thereafter, the Senate Committee on Banking and Currency restored the licensing provisions, but provided that a license might be suspended only by court action. This amendment was finally incorporated in the Act. Thus, the provision was not a casually enacted one, and there is nothing in the hearings, debates, or committee reports to indicate that judicial inquiry into pre-warning notice violations was intended.

⁵ During the debates in the House of Representatives on the 1944 extension of the Emergency Price Control Act, Mr. Wolcott, one of the ranking members of the Committee on Banking and Currency of the House, who had participated in the handling of the original Act and its several ex-

thermore, the legislative history of the Act shows that the licensing sanction was adopted upon the theory that it would supply greater speed and flexibility than other statutory sanctions. See Senate Report 931, 77th Cong., 2d Sess., pp. 8-9. If the license suspension suit must in every instance involve proof in court of the pre-warning notice violations, which may have occurred several years prior to the trial, the sanction could hardly be called expeditious. Thus, the construction

tensions, made the following statements in answer to questions concerning the license suspension provisions of the Act:

"Mr. WOLCOTT. Yes. First they give you a warning, and if you do not obey the warning, under the provisions of the price-control bill they must then make application to a court for suspension of your license.

* * * * *

"Mr. RIZLEY. Tell me what the local court would do.

"Mr. WOLCOTT. The local court has to find that there is a violation of such license, regulation, order, price schedule, or requirement after the receipt of the warning." [90 Cong. Rec. 5481-5482.]

On several occasions the Congress has extended the duration of the Emergency Price Control Act, making an exhaustive review of its provisions and their enforcement, the hearings and debates lasting for several weeks. As a result of this reconsideration, a large number of amendments have been adopted with each extension. Section 108 (d) of the Stabilization Extension Act of 1944 (58 Stat. 632), and Section 13 of the Price Control Extension Act of 1946 (Pub. Law No. 548, 79th Cong., 2d sess.) both amended Section 205 (f) of the Act in respects not here pertinent, showing that the Congress was concerned with this enforcement sanction. However, no changes were made which would enlarge the scope of the judicial inquiry beyond that suggested by Mr. Wolcott.

placed on the section by the court below is not only plainly required by its language, but it is also suggested by its legislative history.

Language such as the Congress used here to express this charging of an administrative officer with the duty of exercising judgment and making a conclusive determination based upon it, with no express provision for judicial review, has many times been held (where, as in this case, it appears in an appropriate context) to mean that no judicial review was intended. And this was true even where the finding directly affected the rights of litigants. See *Martin v. Mott*, 12 Wheat. 19; *United States v. Bush & Co.*, 310 U. S. 371; *Z. & F. Assets Realization Corp. v. Hull*, 311 U. S. 470; and *Switchmen's Union of North America v. National Mediation Board*, 320 U. S. 297. Here, the petitioner had the benefit of a much more liberal rule. He was not only given the benefit of a warning before his license rights were affected, but his license rights were not disturbed until there was adduced at the trial separate proof that he had, after receiving that warning, again violated the price control regulations to which he was subject.

CONCLUSION

The decision of the court below is correct. There are no conflicts of decision, and the case does not call for review. It is respectfully sub-

mitted that the petition for a writ of certiorari should be denied.

✓ J. HOWARD McGRATH,
Solicitor General.

✓ JOHN R. BENNEY,
Attorney.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,

✓ DAVID LONDON,
Director, Litigation Division,

SAMUEL MERMIN,
Solicitor, Litigation Division,

✓ ALBERT J. ROSENTHAL,
Attorney,
Office of Price Administration.

OCTOBER 1946.

APPENDIX

1. Pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Act of 1942 (56 Stat. 767), the Stabilization Extension Act of 1944 (58 Stat. 632), and the Price Control Extension Act of 1946 (Public Law No. 548, 79th Cong., 2d Sess.), 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*

Section 1 (b). The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on *June 30, 1947*,¹ or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of

¹ Originally "June 30, 1943." On October 2, 1942, amended to read "June 30, 1944" (sec. 7 (a) of Stabilization Act of 1942, 56 Stat. 767). On June 30, 1944, amended to read "June 30, 1945" (sec. 101 of Stabilization Extension Act of 1944, 58 Stat. 632). On June 30, 1945, amended to read "June 30, 1946" (59 Stat. 306). On July 25, 1946, amended to read "June 30, 1947" (sec. 1 of the Price Control Extension Act of 1946, Public Law 548, 79th Cong., 2d sess.).

sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

* * * * *

Section 205 (f) (1). Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Pro-*

vided further, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it author-

izes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable; but no¹ suspension shall be for a period of more than twelve months, *and if the defendant proves that the violation in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, then in that event no suspension shall be ordered or directed.*² For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed \$100,000 per annum. Within thirty days after the entry of the judgment or order of any court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties

¹ As amended by sec. 13 of the Price Control Extension Act of 1946, deleting "such" at this point.

² Added by sec. 13 of the Price Control Extension Act of 1946.

to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act: *Provided, That no regulation, order, license, or requirement heretofore or hereafter issued or prescribed pursuant to section 2 (a) (2) of the Act of June 28, 1940, as amended by the Act of May 31, 1941, and by title III of the Second War Powers Act, 1942, may validly contain any requirement as to the observance of any regulation, order, license, or requirement issued or prescribed pursuant to this Act or the Stabilization Act of October 2, 1942.*³

2. Sections 1 and 18 of Price Control Extension Act of 1946 (Pub. Law 548, 79th Cong., 2d Sess.).

SEC. 1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1946" and substituting "June 30, 1947."*

³ Added by sec. 108 (d) of the Stabilization Extension Act of 1944.

SEC. 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2 (e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946: *Provided*, That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946, to the date of enactment of this Act, both inclusive: *Provided further*, That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabiliza-

tion Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: *Provided further*, That insofar as the provisions of this Act require the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

3. Pertinent Provisions of Maximum Price Regulation 422 (8 F. R. 9395).

SEC. 13. *Licensing and registration.* The licensing and registration provisions of sections 15 and 16 of the General Maximum Price Regulation * shall apply to every person subject to this regulation. Sections 15 and 16 provide, in brief, that a license is required of all persons selling at retail commodities for which ceiling prices are established. A license is automatically granted so do not apply for it. However, all sellers may later be required to register. The license may be suspended for violations in connection with the sale of any commodity for which ceiling prices are established. No person whose license is suspended may sell any such commodity during the period of suspension.

4. Licensing Order No. 1 (8 F. R. 13240).

SEC. 1305.72. *License required.* Any person who makes a sale under price control is hereby required to have a license to make such sales.

SEC. 1305.73 *License granted.* A license to make sales under price control is automatically

* 8 F. R. 3096, 3849, 4347, 4486, 4724, 4848, 4978, 6047, 6962.
[Footnote appears in the regulation.]

granted to all persons who now or hereafter make such sales. But the grant of this license to any person whose license heretofore granted by the Office of Price Administration is under suspension shall become effective for sales to which the suspension applies only at the end of the period of suspension.

SEC. 1305.74 *License suspension.* A license granted hereby may be suspended in accordance with the provisions of the Emergency Price Control Act of 1942 for violations of the license or of one or more applicable maximum price regulations. The provisions of all such regulations are made a part of each license granted hereby, and a violation of any such provision is a violation of the license. A person whose license has been suspended may not, during the period of suspension, make any sale for which his license has been suspended.

SEC. 1305.75. *Previous licenses.* Every license heretofore granted by the Office of Price Administration and in effect when this order becomes effective, is merged and continued in the license granted by this order. The former license no longer continues as a separate license. If the former license is suspended by a pending license suspension proceeding, the license granted by this order is suspended to the same extent. Proceedings to suspend a license granted hereby may be begun and maintained without a further warning notice to any person to whom a warning notice under a previous license was sent.

SEC. 1305.76 *Exemptions.* No license is required of, or granted to, a farmer as a condition of selling an agricultural commodity produced by

him, a fisherman as a condition of selling a fishery commodity caught or taken by him, the United States, or any agency thereof, or any other Government, its political subdivisions or agencies.

SEC. 1305.76a *Definitions.* When used in this Licensing Order No. 1 the term:

(a) "Sale under price control" means any sale for which a maximum price is established by, or must be determined pursuant to, a maximum price regulation.

(b) "Maximum price regulation" means any maximum price regulation, revised maximum price regulation, price schedule, revised price schedule, or order establishing or providing for the determination of maximum prices, issued by the Office of Price Administration.

(c) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing.

(d) "Person who makes a sale" and "seller" include both a person who sells for his own account and a person who sells for the account of another, whether as broker, agent, auctioneer, or otherwise.

Effective date. This Licensing Order No. 1 shall become effective 12:01 A. M. October 1, 1943.

PRENTISS M. BROWN,
Administrator.